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SENATE

REPORT
No. 97-375

PROVIDING WATER TO THE PAPAGO TRIBE OF ARIZONA, TO SETTLE PAPAGO INDIAN WATER RIGHTS CLAIMS IN PORTIONS OF THE PAPAGO RESERVATIONS, AND FOR OTHER PURPOSES

APRIL 29 (legislative day, APRIL 13), 1982.—Ordered to be printed

Mr. COHEN, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 5118]

The Select Committee on Indian Affairs, to which was referred the bill (H.R. 5118) to provide water to the Papago Tribe of Arizona, to settle Papago Indian water rights claims in portions of the Papago reservations, and for other purposes having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

The amendment in the nature of a substitute is as follows:

CONGRESSIONAL FINDINGS

SECTION 1. The Congress finds that—

(1) water rights claims of the Papago Tribe with respect to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation are the subject of existing and prospective lawsuits against numerous parties in southern Arizona, including major mining companies, agricultural interests, and the city of Tucson;

(2) these lawsuits not only will prove expensive and time consuming for all participants, but also could have a profound adverse impact upon the health and development of the Indian and non-Indian economies of southern Arizona;

(3) the parties to the lawsuits and others interested in the settlement of the water rights claims of the Papago Indians within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that

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area have diligently attempted to settle these claims and the Federal Government, by providing the assistance specified in this Act, will make possible the execution and implementation of a permanent settlement agreement;

(4) it is in the long-term interest of the United States, the State of Arizona, its political subdivisions, the Papago Indian Tribe, and the non-Indian community of southern Arizona that the United States Government assist in the implementation of a fair and equitable settlement of the water rights claims of the Papago Indians respecting certain portions of the Papago Reservation; and

(5) the settlement contained in this Act will—

(A) provide the necessary flexibility in the management of water resources and will encourage allocation of those resources to their highest and best uses; and

(B) insure conservation and management of water resources in a manner consistent with the goals and programs of the State of Arizona and the Papago Tribe.

DEFINITIONS

SEC. 2. For purposes of this Act—

(1) The term "acre-foot" means the amount of water necessary to cover one acre of land to a depth of one foot.

(2) The term "Central Arizona Project" means the project authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. 1521, et seq.).

(3) The term "Papago Tribe" means the Papago Tribe of Arizona organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476).

(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "subjugate" means to prepare land for the growing of crops through irrigation.

(6) The term "Tucson Active Management Area" means the area of land corresponding to the area initially designated as the Tucson Active Management Area pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1.

(7) The term "December 12, 1980, agreement" means the Central Arizona Project water delivery contract between the United States and the Papago Tribe.

(8) The term "replacement costs" means the costs of acquiring and delivering water from sources within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area.

(9) The term "value" means the value attributed to the water based on the Tribe's anticipated or actual use of the water, including its fair market value.

WATER DELIVERIES TO TRIBE FROM CAP; MANAGEMENT PLAN, REPORT ON WATER AVAILABILITY; CONTRACT WITH TRIBE

SEC. 3. (a) As soon as is possible but not later than ten years after the enactment of this Act, if the Papago Tribe has agreed to the conditions set forth in section 6, the Secretary, acting through the Bureau of Reclamation, shall—

(1) in the case of the San Xavier Reservation—

(A) deliver annually from the main project works of the Central Arizona Project twenty-seven thousand acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 4(a); and

(B) improve and extend the existing irrigation system on the San Xavier Reservation and design and construct within the reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(2) in the case of the Schuk Toak District of the Sells Papago Reservation—

(A) deliver annually from the main project works of the Central Arizona Project ten thousand eight hundred acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 4(a); and

(B) design and construct an irrigation system in the Eastern Schuk Toak District of the Sells Papago Reservation, including such canals, laterals, farm ditches, and irrigation works, as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(3) establish a water management plan for the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation which, except as is necessary to be consistent with the provisions of this Act, will have the same effect as any management plan developed under Arizona law.

(b)(1) In order to encourage the Papago Tribe to develop sources of water on the Sells Papago Reservation, the Secretary shall, if so requested by the tribe, carry out a study to determine the availability and suitability of water resources within the Sells Papago Reservation but outside the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area.

(2) The Secretary shall, in cooperation with the Secretary of Energy, or, with the appropriate agency or officials, carry out a study to determine—

(A) the availability of energy and the energy requirements which result from the enactment of the provisions of this Act, and

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(B) the feasibility of constructing a solar power plant or other alternative energy producing facility to meet such requirements.

(c) The Papago Tribe shall have the right to withdraw ground water from beneath the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation subject to the limitations of section 6(a).

(d) Nothing contained in this Act shall diminish or abrogate any obligations of the Secretary to the Papago Tribe under the December 12, 1980, agreement.

(e) Nothing contained in sections 3(c) and 5(c) shall be construed to establish whether or not the Federal reserved rights doctrine applies, or does not apply, to groundwater.

DELIVERIES UNDER EXISTING CONTRACT; ALTERNATIVE WATER SUPPLIES; OPERATION AND MAINTENANCE

SEC. 4. (a) The water delivered from the main project works of the Central Arizona Project to the San Xavier Reservation and to the Schuk Toak District of the Sells Papago Reservation as provided in section 3(a), shall be delivered in such amount, and according to such terms and conditions, as are set forth in the December 12, 1980, agreement, except as otherwise provided under this section.

(b) Where the Secretary, pursuant to the terms and conditions of the agreement referred to in subsection (a), is unable, during any year, to deliver from the main project works of the Central Arizona Project any portion of the full amount of water specified in section 3(a)(1)(A) and section 3(a)(2)(A), the Secretary shall acquire and deliver an equivalent quantity of water from the following sources or any combination thereof:

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area in the State of Arizona:

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands or interests referred to in subparagraph (A) shall be made only to the extent such water

may be transported within the Tucson Active Management Area pursuant to State law.

(c) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section or paragraphs (1)(A) and (2)(A) of section 3(a), he shall pay damages in an amount equal to—

(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this Act, or

(2) the value of such quantities of water as are not acquired and delivered, where the delivery system is completed.

(d) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (b) without the consent of the owner thereof. No private lands may be acquired under subsection (b)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water rights, the use of which is recognized by State law. In acquiring any private lands under subsection (b)(3)(A), the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

(e) To meet the obligation referred to in paragraphs (1)(A) and (2)(A) of section 3(a), the Secretary shall, acting through the Bureau of Reclamation, as part of the main project works of the Central Arizona Project—

(1) design, construct and, without cost to the Papago Tribe, operate, maintain, and replace such facilities as are appropriate including any aqueduct and appurtenant pumping facilities, treatment plants, powerplants, and electric power transmission facilities which may be necessary for such purposes; and

(2) deliver the water to the southern boundary of the San Xavier Reservation, and to the boundary of the Schuk Toak District of the Sells Papago Reservation, at points agreed to by the Secretary and the tribe which are suitable for delivery to the reservation distribution systems.

(f) To facilitate the delivery of water to the San Xavier and the Schuk Toak District of the Sells Papago Reservation under this Act, the Secretary is authorized—

(1) to enter into contracts or agreements for the exchange of water, or for the use of aqueducts, canals, conduits, and other facilities for water delivery, including pumping plants, with the State of Arizona or any of its subdivisions, with any irrigation district or project, or with any authority, corporation, partnership, individual, or other legal entity; and

(2) to use facilities constructed in whole or in part with Federal funds.

RECLAIMED WATER; ALTERNATIVE WATER SUPPLIES

SEC. 5. (a) As soon as possible, but not later than ten years after the date of enactment of this Act, the Secretary shall purchase reclaimed water in accordance with the agreement described in section 7(a)(1) and deliver annually twenty-three thousand acre-feet of water suitable for agricultural use to the San Xavier Reservation and deliver annually five thousand two hundred acre-feet of water suitable for agricultural use to the Schuk Toak District of the Sells Papago Reservation.

(b)(1) The obligation of the Secretary referred to in subsection (a) to deliver water suitable for agricultural use may be fulfilled by any additional treatment, including land filtration, of the reclaimed water acquired by the Secretary as provided herein, by any other means which renders such reclaimed water suitable for agricultural use, or by voluntary exchange of that reclaimed water for any other water suitable for agricultural use. To make available and deliver such water, the Secretary acting through the Bureau of Reclamation shall design, construct, operate, maintain, and replace such facilities as are appropriate.

(2) The Secretary shall not construct a separate delivery system to deliver reclaimed water referred to in subsection (a) to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation.

(c) The Secretary may, as an alternative to, and in satisfaction of the obligation to deliver the quantities of water to be delivered under subsection (a), acquire and deliver pursuant to agreements authorized in section 7(b), an equivalent quantity of water from the following sources or any combination thereof—

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area in the State of Arizona and that part of the Upper Santa Cruz Basin not within that area—

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(d) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section, he shall pay damages in an amount equal to—

(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this Act, or

(2) the value of such quantities of water as are not acquired and delivered, where a delivery system is completed.

(e) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (c) without the consent of the owner thereof. No private lands may be acquired under subsection (c)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water the right to the use of which is recognized by State law. In acquiring said private lands, the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water-rights of any Indian tribe, band, group, or community.

LIMITATION ON PUMPING FACILITIES FOR WATER DELIVERIES; DISPOSITION OF WATER

SEC. 6. (a) The Secretary shall be required to carry out his obligation under subsections (b), (c), and (e) of section 4 and under section 5 only if the Papago Tribe agrees to—

(1) limit pumping of ground water from beneath the San Xavier Reservation to not more than ten thousand acre-feet per year;

(2) limit the quantity of ground water pumped from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area to those quantities being withdrawn on January 1, 1981; and

(3) comply with the management plan established by the Secretary under section 3(a)(3).

Nothing contained in paragraph (1) shall restrict the tribe from drilling wells and withdrawing ground water therefrom on the San Xavier Reservation if such wells have a capacity of less than thirty-five gallons per minute and are used only for domestic and livestock purposes. Nothing contained in paragraph (2) shall restrict the tribe from drilling wells and withdrawing ground water therefrom in the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area if such wells

have a capacity of less than thirty-five gallons per minute and which are used only for domestic and livestock purposes.

(b) The Secretary shall be required to carry out his obligations with respect to distribution systems under paragraphs (1)(B) and (2)(B) of section 3(a) only if the Papago Tribe agrees to—

(1) subjugate the land for which those distribution systems are to be planned, designed, and constructed by the Secretary; and

(2) assume responsibility, through the tribe or its members or an entity designated by the tribe, as appropriate, following completion of those distribution systems and upon delivery of water under this Act, for the operation, maintenance, and replacement of these systems in accordance with the first section of the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385).

(c)(1) The Papago Tribe shall have the right to devote all water supplies under this Act, whether delivered by the Secretary or pumped by the tribe, to any use, including but not limited to agricultural, municipal, industrial, commercial, mining, or recreational use whether within or outside the Papago Reservation so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area.

(2) The Papago Tribe may sell, exchange, or temporarily dispose of water, but the tribe may not permanently alienate any water right. In the event the tribe sells, exchanges, or temporary disposes of water such sale, exchange, or temporary disposition shall be pursuant to a contract which has been accepted and ratified by a resolution of the Papago Tribal Council and approved and executed by the Secretary as agent and trustee for the tribe. Such contract shall specifically provide that an action may be maintained by the contracting party against the United States and the Secretary for the breach thereof. The proceeds from any sale, exchange, or disposition of water by the Papago Tribe shall be used for social or economic programs which benefit the Papago Tribe.

(d) Nothing in section 6(c) shall be construed to establish whether or not reserved water may be put to use, or sold for use, off of any reservation to which reserved water rights attach.

OBLIGATION OF THE SECRETARY; CONTRACT FOR RECLAIMED WATER; DISMISSAL AND WAIVER OF CLAIMS OF PAPAGO TRIBE AND ALLOTTEES

SEC. 7. (a) The Secretary shall be required to carry out his obligations under subsections (b), (c), and (e) of section 4 and under section 5 only if—

(1) within one year of the date of enactment of this Act—

(A) the city of Tucson, the Secretary, and the Papago Tribe agree, after the enactment of this Act, that the city will make available at no profit to the city such quantity of reclaimed water as is adequate to deliver annually, as contemplated in section 5(a), twenty-eight thousand two hundred acre-feet of water;

(B) the Papago Tribe agrees to file with the United States District Court for the District of Arizona a stipulation for voluntary dismissal with prejudice, in which the Attorney General is authorized and directed to join on behalf of the United States, and the allottee class representatives petition for dismissal of the class action with prejudice in the United States, the Papago Indian Tribe, and others against the city of Tucson, and others, civil numbered 75-39 TUC (JAW); and

(C) the Papago Tribe executes a waiver and release in a manner satisfactory to the Secretary of—

(i) any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from time immemorial to the date of the execution by the tribe of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona; and

(ii) any and all future claims of water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from and after the date of execution of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona; and

(2) the suit referred to in paragraph (1)(B) is finally dismissed.

(b) After the conditions referred to in subsection (a) have been met the Secretary shall be authorized and required, if necessary or desirable, to enter into agreements with other individuals or entities to acquire and deliver water from such sources set forth in section 5(c) if through such contracts as exercised in conjunction with the contract required in sub-

section (a)(1)(A) it is possible to deliver the quantities of water required in section 5(a).

(c) Nothing in this section shall be construed as a waiver or release by the Papago Tribe of any claim where such claim arises under this Act.

(d) The waiver and release referred to in this section shall not take effect until such time as the trust fund referred to in section 9 is in existence and the full amount authorized to be appropriated to the trust fund under section 9 has been appropriated by the Congress.

(e) The settlement provided in this Act shall be deemed to fully satisfy any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) of all individual members of the Papago Tribe that have a legal interest in lands of the San Xavier Reservation and the Schuk Toak District of the Sells Reservation located within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, as of the date the waiver and release referred to in this section take effect. Any entitlement to water of any individual member of the Papago Tribe shall be satisfied out of the water resources provided in this Act.

STUDY OF LANDS WITHIN THE GILA BEND RESERVATION; EXCHANGE OF LANDS AND ADDITION OF LANDS TO THE RESERVATION; AUTHORIZED APPROPRIATIONS

SEC. 8. (a) The Secretary is hereby authorized and directed to carry out such studies and analysis as he deems necessary to determine which lands, if any, within the Gila Bend Reservation have been rendered unsuitable for agriculture by reason of the operation of the Painted Rock Dam. Such study and analysis shall be completed within one year after the date of the enactment of this Act.

(b) If, on the basis of the study and analysis conducted under subsection (a), the Secretary determines that lands have been rendered unsuitable for agriculture for the reasons set forth in subsection (a), and if the Papago Tribe consents, the Secretary is authorized to exchange such lands for an equivalent acreage of land under his jurisdiction which are within the Federal public domain and which, but for their suitability for agriculture, are of like quality.

(c) The lands exchanged under this section shall be held in trust for the Papago Tribe and shall be part of the Gila Bend Reservation for all purposes. Such lands shall be deemed to have been reserved as of the date of the reservation of the lands for which they are exchanged.

(d) Land exchanged under this section which, prior to the exchange, were part of the Gila Bend Reservation, shall be managed by the Secretary of the Interior through the Bureau of Land Management.

(e) The Secretary may require the Papago Tribe to reimburse the United States for moneys paid, if any, by the Fed-

eral Government for flood easements on lands which the Secretary replaces by exchange under subsection (b).

ESTABLISHMENT OF TRUST FUND; EXPENDITURES FROM FUND

SEC. 9. There is hereby authorized to be established in the Treasury of the United States a trust fund for the benefit of the Papago Tribe in the amount of $15,000,000 to be invested by the Secretary in interest bearing deposits and securities including deposits and securities of the United States. The income accruing on such deposits and securities may only be used, pursuant to appropriations legislation, for the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities (including pumping and power transmission facilities) on the Papago Reservation which are not the obligation of the United States under this or any other Act of Congress.

APPLICATION OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

SEC. 10. The functions of the Bureau of Reclamation under this Act shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. 450) to the same extent as if performed by the Bureau of Indian Affairs.

EXTENSION OF STATUTE OF LIMITATIONS

SEC. 11. Notwithstanding section 2415 of title 28, United States Code, any action relating to water rights of the Papago Indian Tribe or any member of such tribe brought by the United States for, or on behalf of, such tribe or member of such tribe, or by such tribe on its own behalf, shall not be barred if the complaint is filed prior to January 1, 1985.

ARID LAND RENEWABLE RESOURCE ASSISTANCE

SEC. 12. If a Federal entity is established to provide financial assistance to undertake arid land renewable resources projects and to encourage and assure investment in the development of domestic sources of arid land renewable resources, such entity shall give first priority to the needs of the Papago Tribe in providing such assistance. Such entity shall make available to the Papago Tribe—

(1) price guarantees, loan guarantees, or purchase agreements,

(2) loans, and

(3) joint venture projects,

at a level to adequately cultivate a minimum number of acres as determined by such entity to be necessary to the economically successful cultivation of arid land crops and a

level to contribute significantly to the economy of the Papago Tribe.

AUTHORIZATION OF APPROPRIATIONS

SEC. 13. There are authorized to be appropriated for fiscal year 1983, and each fiscal year thereafter, such sums as may be necessary to carry out the purposes of this Act.

COMPLIANCE WITH BUDGET ACT

SEC. 14. No authority under this Act to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this Act which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1982.

SHORT TITLE

SEC. 15. This Act may be cited as the "Southern Arizona Water Rights Settlement Act of 1982".

PURPOSE

The purpose of H.R. 5118 is to provide a fair and reasonable settlement of the water rights claims of the San Xavier Papago Indian Reservation and the Schuk Toak District of Sells Papago Indian Reservation with a minimum of social and economic disruption to the Indian and non-Indian communities in Tucson and eastern Pima County, Arizona.

Under the terms of the Act, the Papago Tribe is guaranteed an annual supply of water from specified sources. To coordinate water resource planning and management with other water users in the area, a water management plan for the Papago Tribe will be established that is consistent with State planning and management.

Acquisition and delivery of water to the Papago Tribe is contingent upon the Tribe's taking action to petition for dismissal of pending legal action, and releasing claims to water from the Tucson and eastern Pima County area other than water as provided in this Act. The settlement contained in H.R. 5118 will remove the cloud on title of non-Indian water users and enhance regional water resource planning and management.

The allocation of water resources to the Papago Tribe under this Act is uniquely suited to the geographic, social and economic characteristics of the area and is not intended to be applied to any other Indian water rights claims in other areas, within or without the State of Arizona.

BACKGROUND AND NEED

Management of groundwater resources is currently being implemented by the Arizona Department of Water Resources pursuant to a groundwater code enacted by the State legislature in 1980. The Code designates four geographic units as Active Management Areas (AMA). Among other things, the Code imposes limitations on the

transportation of groundwater between sub-basins or away from any AMA. The Tucson Active Management Area corresponds to the geographic boundaries of the Upper Santa Cruz Valley Basin and the Avra/Altar Valley Basin. The goal of the Tucson AMA is a safe yield, that is, a balance between recharge and withdrawals, by January 1, 2025.

The San Xavier Papago Reservation and the Schuk Toak District of the Sells Papago Reservation are located in eastern Pima County, adjacent to the Tucson metropolitan area. The San Xavier Reservation lies primarily within the Upper Santa Cruz Basin, and the Schuk Toak District is located in the Avra/Altar Valley Basin. The San Xavier Papago Reservation occupies approximately 70,000 acres immediately southwest of the Tucson metropolitan area. The Schuk Toak District is part of the Sells Papago Reservation.

The Tucson metropolitan area, population 531,000, is one of the largest communities in the world that is solely dependent upon groundwater for its municipal and industrial water supply. That water supply came from several well fields located in the Santa Cruz and Avra/Altar Valley basins. These two basins also supply water used by five different companies operating copper mines located adjacent to the San Xavier Reservation. Other significant water users in eastern Pima County include two Irrigation Districts and the Farmers Investment Company.

Data assembled by the Water Resources Coordination Committee, a voluntary association of the major water users in eastern Pima County, indicate that consumptive use of groundwater pumped from these basins exceeds recharge and that a serious imbalance between existing supply and demand exists in these basins. Current demand for water exceeds renewable supplies by a ratio of more than four to one. This imbalance has resulted in significant, long term declines in local groundwater levels. There is increasing concern that further decline in water levels will result in increased pumping costs, reduction in well capacity, diminished water quality, and increased risk of land surface subsidence.

This legislation provides for delivery of significant quantities of water to the San Xavier and Schuk Toak Districts of the Papago Indian Reservation. The settlement is limited to these two districts. Further water entitlements of the Papago Indians in other water basins are not affected by this legislation.

COSTS

The primary costs of H.R. 5118, as amended by the Select Committee on Indian Affairs, are: (1) the costs of constructing farm ditches, operation, maintenance and replacement of delivery systems to the reservation, establishment of a $15 million trust fund, and conducting of certain studies; and, (2) the potential costs of incremental sizing of Phase B of the Tucson Aqueduct and firming up the Tribe's water supply or paying damages, if any.

Costs for construction of Phase B of the Tucson Aqueduct for delivery of the Tribe's CAP allocation and for the Papago CAP distribution system are allocable to Public Law 90–537. Under the House-passed bill, Phase B construction costs allocable to the delivery of the

Tribe's CAP water would be allocated, instead, to this settlement legislation. The Committee amendments to H.R. 5118 continue the current allocation of Phase B construction costs to Public Law 90–537.

The Committee adopted cost-related provisions that differ from the House-passed bill in two other important respects. First, the Senate bill prohibits the construction of a single-purpose delivery system to deliver reclaimed water acquired from the City of Tucson under Section 5(a). The House report states, "It is anticipated that the Secretary will choose the least cost alternative to fulfill his obligations under this section." Despite this language, the Administration expressed concern that the Act might require construction of a single purpose delivery system. The Senate Committee concurs with the intent of the House and expressly prohibits construction of a single purpose delivery system. Secondly, the Senate bill more strictly limits the measure of damages, if the Secretary is unable in any year to deliver all of the water provided for in the settlement.

The Committee disagrees with a number of cost estimates furnished by the Administration to the House of Representatives. Its principal disagreements related to the estimated costs associated with Phase B of the Tucson Aqueduct, for land subjugation, and for damages to the Tribe.

The Administration estimated an additional cost of $35 million under the settlement to construction of Phase B of the Tucson Aqueduct as an all-Indian, rather than as a joint-use, facility to deliver the Tribe's 37,800 acre-feet of CAP allocation. The Committee notes that the Secretary of the Interior has decided to construct a joint-use facility under the authority granted him in Public Law 90–537. This decision means that no additional costs will be incurred and that the $35 million estimate provided by the Administration should be disregarded. In any case, the cost of the facility is a cost under Public Law 90–537 and not under this settlement.

The Administration estimated that sizing Phase B to provide increased capacity for 28,200 acre-feet of water to be delivered under Section 5 would cost $50 million. The Tribe has furnished the Committee with estimates at current prices showing a cost of $42 million for the additional capacity.

The Administration's estimate of an additional cost of $16 million for constructing on-farm distribution systems and for land subjugation under the settlement bills incorrectly assumed that the costs of subjugating reservation lands for irrigation with water pursuant to this settlement are the obligations of the United States. Section 6(b)(1) of H.R. 5118 requires the Tribe, *not* the Federal government, to pay the subjugation costs. These costs will be paid with income from the trust fund established under Section 9. The Committee understands that the additional costs of on-farm distribution systems is the cost of farm ditches under Section 3(a) to serve approximately 7,000 acres. The Committee is informed the additional costs are approximately $700,000 and not the $16 million estimated by the Administration.

The Administration's estimate of damages under Sections 4 and 5, assumed that the Secretary would be unable to deliver any water whatsoever to the Tribe, and furthermore based its figures on annual costs in perpetuity rather than on average annual costs of any anticipated

shortages. The Committee is informed that, during the first 15–20 years of the CAP, the project will be able to furnish all or nearly all of the 37,800 acre-feet of water provided for in Section 3 and that in no year during this period is it likely to omit deliveries altogether. The Committee also anticipates that no shortages will occur in the supply of reclaimed water acquired from the City of Tucson pursuant to the settlement. The Committee concludes that the cost of damages, if any, will be far below the Administration's estimate of $430/acre foot of water. The Committee amendments to the measure of damages and definition of terms will limit potential damages to far lesser sums.

SAVINGS

Important savings to the Federal government will result from settlement of Papago claims. These include: costly litigation expenses, which the United States continues to incur on behalf of the Papago, after six years in court and with no end in sight; and dependency costs to mitigate the extreme conditions of poverty and unemployment among the Papagos.

The United States also avoids costs of litigating potential suits by the Tribe and non-Indian water-users in the area for failure to exercise trusteeship duties to protect water resources of the Tribe. Such suits could be lengthy, costly, and ultimately require the United States to pay damages.

The Committee notes that the United States already intends to incur substantial costs under the Tribe's existing CAP contract, without receiving any of the savings afforded by this settlement.

CONTRIBUTIONS

The Committee recognizes that the water-users in Arizona will bear a considerable share of the burden of providing water to the Papagos. For example, the City of Tucson will forgo the opportunity of making a profit on 28,200 acre-feet of reclaimed water that it would otherwise sell to non-Indian water-users. Non-Indian water users will forgo the opportunity of acquiring the reclaimed water at lower costs than their current costs for pumped water. Moreover, under the existing law, the costs to deliver the Tribe's CAP allocation from the Colorado River to the San Xavier and Schuk Toak Districts will be defrayed, in some measure, by charges to non-Indian CAP water-users within the project boundaries. While the impact of this on any individual water-user is negligible, the total contribution by CAP water-users is considerable.

The Committee recognizes that Pima County water-users have already made important contributions to a rational water management program and have thus helped make this settlement possible.

Agricultural users have greatly improved their irrigation efficiency by land leveling, ditch lining, and installation of pump-back. Further decrease in agricultural water use is anticipated through municipal and industrial development of currently irrigated land. According to data assembled by the Water Resources Coordinating Committee, a voluntary association of Pima County water-users, such development

could reduce the amount of water consumption per acre by 75 percent. Statement of the Water Resources Coordination Committee to the Water and Power Resources Subcommittee of the U.S. House Committee on Interior and Insular Affairs, March 13, 1981.

The Mines have also realized considerable conservation through a variety of methods, such as recirculation of water, water recovery from tailings areas, use of settling methods prior to disposal of mine waste, reduction of water levels in flotation cells and utilization of natural seepage. They have also voluntarily purchased and retired agricultural land at considerable cost to reduce consumptive use and overall demands on the Basin.

Municipal customers of the City of Tucson have, through voluntary conservation programs, reduced their average daily per capita demand from 205 gallons in 1974 to 140 gallons in 1979. The significance of this reduction is apparent by comparing this consumption rate with use in other major cities in the Southwest:

City:	*Per capita demand*
El Paso	173
Phoenix	220
Las Vegas	310
San Diego	179
Reno	189
Tucson	140

The Papago Tribe is also required to make significant contributions to the settlement. It must waive all claims for additional water in the Upper Santa Cruz and Avra/Altar water basins and all claims for injuries to water rights in these basins; it must limit its groundwater pumping; and, it must agree to dismissal of pending claims.

In turn, the Tribe will receive an assured annual supply of water sufficient to irrigate additional lands for agriculture or for other non-irrigation purposes in the San Xavier Reservation and Schuk Toak District of the Sells Papago Reservation. It should be noted that while the annual supply to the tribe is firm, it is not all guaranteed from the CAP project. In times of shortage the Secretary may meet the commitment through alternative sources. This will create employment opportunities, increase the Tribe's food supply, and generate profits to help finance essential community services.

SUMMARY OF MAJOR PROVISIONS

This bill is predicated upon the findings that the claims of the Papago Tribe to water from basins underlying Tucson and eastern Pima County are a cloud upon the title of water users in the area, and that these claims, and the suits now pending to resolve these claims could have a profoundly detrimental effect upon the health and development of both the Indian and non-Indian economies of southern Arizona.

It is the intent of the Committee that the terms and provisions of this settlement be applied exclusively to the water rights claims which are the subject of this Act.

Nothing in this Act shall be construed to expand or diminish the federal reserved water rights doctrine. Nothing in the Act is intended to determine whether or not the reserved rights doctrine applies or

does not apply to groundwater or whether or not federal reserved water may be put to use off the reservation to which the water rights attach.

The settlement provides for acquisition and delivery of a firm annual water supply to the named Papago reservations from several specific sources. These sources include the Central Arizona Project (CAP), a limited amount of groundwater pumping, and reclaimed water acquired from the City of Tucson.

To enable the Tribe to put water to beneficial use on the San Xavier and Schuk Toak reservations, the Secretary shall, without cost to the tribes, design and construct on reservation water distribution systems on both reservation areas, including such canals, laterals, farm ditches and irrigation works as are necessary for the efficient distribution of the water to be delivered under section 3.

Section 3(a)(3) requires the Secretary to establish a water management plan for the San Xavier Reservation and the Schuk Toak District which is consistent with any management plan developed under State law. Establishment of this plan, however, does not vest the State with actual jurisdiction over water management or use within the reservation.

The Papago Tribe shares the concerns of the non-Indian water users that overdraft of the groundwater supply and the resulting lowering of the groundwater table adversely affects the environment and economy of eastern Pima County. To acknowledge that concern, and as part of the settlement agreement, the Tribe agrees to participate in the planning and management of basin and groundwater resources pursuant to a plan established by the Secretary.

Nothing in this Act shall be construed to subject the Tribe's withdrawal of groundwater from the San Xavier Reservation and the Schuk Toak District of the Sells Reservation to any tax or fees levied or collected by the State of Arizona pursuant to State law, and the Tribe is free to establish its own water use priorities as provided in Section 6 of the Act.

In recognition of the fact that a firm annual water supply is essential to the long-range future of the Papago Tribe, and to the settlement of the Papago water rights claims, the bill in Section 4 requires the Secretary to acquire and deliver such supplemental amounts of water as are needed to offset any shortages in CAP deliveries to the Tribe. In times of shortages in CAP water deliveries, the Secretary is authorized and directed under Section 4 to obtain supplemental water supplies from several possible sources, all of which, with the exception of augmented CAP supplies, are located within the basins that comprise the Tucson Active Management area.

Possible sources include:

(a) Additional water made available by augmentation of the CAP water supply;

(b) Private lands that have water rights recognized under State law; and

(c) Reclaimed water.

No private lands, or interests therein, or reclaimed water may be acquired without the consent of the owner. If the Secretary finds he is unable to acquire and deliver water in the amounts set forth in

section 3(a), 4(a), or 4(b), he shall pay damages to the Tribe as described in Sec. 4(c).

To deliver water from the Central Arizona Project to the indicated areas on the San Xavier Reservation and the Schuk Toak District of the Sells Reservation, the Secretary, is authorized and directed in Section 4 to design, construct, operate, maintain and replace facilities. Construction of facilities to deliver CAP water to the southern boundary of the San Xavier Indian Reservation, to serve water users in Tucson and southern Arizona, is already authorized under Public Law 90–537. Because delivery of CAP water is, pursuant to this settlement, a part of the final settlement of the named water rights claims of the Papago Tribe, the costs of operation and maintenance of the CAP facilities to deliver water to the Papago Reservations is made the obligation of the United States.

In addition to the water acquired from the CAP and delivered to the Tribe, the Secretary, under Section 5, is authorized and directed to acquire and deliver 23,000 acre feet of reclaimed water suitable for agricultural use to the San Xavier Reservation and 5,200 acre feet of water of the same quality to the Schuk Toak District.

It is anticipated by the Committee that the Secretary will acquire reclaimed water from the City of Tucson, pursuant to the agreement described in Section 7, to fulfill his obligations under this section. Reclaimed water will be provided to the Secretary at no profit to the City. This provision permits the City to recover costs of making the reclaimed water available to the Secretary but does not permit sale at a profit.

In order to deliver water of a quality suitable for agricultural use, further treatment of the reclaimed water may be necessary. Section 5 of H.R. 5118 as reported by the Select Committee provides that the Secretary may choose any method of treatment, including treatment by land filtration system for delivery or exchange of the reclaimed water with other water users. Amendments proposed to H.R. 5118 specifically preclude construction of a single purpose delivery system to deliver reclaimed water acquired from the City of Tucson, thus resulting in a saving of several million dollars over the House version of H.R. 5118.

If the Secretary is unable to acquire and deliver water, he shall pay damages to the Tribe in the amount of the actual replacement cost of such water, or the value as these terms are defined in Section 2.

As a condition precedent to the Secretary's obligations to deliver water to the reservation, Section 6 requires the Papago Tribe to:

(a) Limit pumping of groundwater from beneath the San Xavier Reservation to not more than 10,000 acre feet per year;

(b) Pump no more groundwater from beneath the Schuk Toak District than was being pumped as of January 1, 1981; and

(c) Comply with the management plan established by the Secretary.

Section 6(c) states that water pumped by or delivered to the Papago Tribe under this Act may be put to any use, on or off the Papago Reservation, provided such use occurs within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area.

Nothing in this section, or in any other provision of this Act, shall be construed to determine whether or not the doctrine of Federal reserved water rights permits the sale, lease or exchange of water outside the boundaries of the reservation to which the water rights attach.

Section 7 provides that the Secretary's obligation to deliver water under Sections 4(b), (c), and (e) and Section 5 is contingent upon an agreement being reached by the Secretary, the Tribe and City of Tucson regarding acquisition and delivery of reclaimed water, and action by the Tribe to dismiss the pending lawsuits and to waive claims to water other than that provided herein.

To remedy a flooding problem at another Papago Reservation, the Secretary is authorized under Section 8 to carry out studies to determine whether the operation of the Painted Rock Dam, on the Gila Bend Papago Reservation, has rendered reservation lands unsuitable for irrigation. The Gila Bend Reservation is located in the western part of Arizona, well outside the Tucson Active Management Area.

If the Secretary finds that operation of the dam has rendered tribal lands unsuitable for irrigation, he may exchange those lands, with the consent of the Tribe, for lands of similar quality from the public domain.

Section 9 authorizes establishment of a $15 million trust fund, the income from which is to be used for the subjugation of land, the development of water resources, and the construction, operation, maintenance, and replacement of related facilities. It is not intended to relieve the United States of the costs to plan, construct, operate, maintain or replace any facilities where these obligations arise under this Act or any other act of Congress.

The Committee amendment to H.R 5118 adds a new section 10 to provide that the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638) shall be applicable to Bureau of Reclamation project activity in connection with construction of on-reservation distribution systems in the two reservation areas. A new section 11 is added to extend the period of limitation for filing of claims under the Federal statute of limitations to December 31, 1984, for additional claims of the Papago Tribe in adjoining water districts. The purpose of this is to allow orderly completion of on-going negotiations. In addition the Committee amendment aids a new section 12 to provide that if a Federal entity is established to provide financial assistance to arid land renewable resources projects, the Papago Tribe shall be given a priority.

LEGISLATIVE HISTORY

S. 2114 was introduced by Senator DeConcini for himself and Senator Goldwater on February 11, 1982. A hearing on S. 2114 and H.R. 5118 was held by the Committee on March 31, 1982.

H.R. 5118 was introduced by Congressman Udall on December 3, 1981, following hearings on predecessor legislation H.R. 4363. H.R. 5118 was passed in the House on March 4, 1982, by a vote of 311 for and 50 against, 73 not voting. H.R. 5118 was referred to the Select Committee on Indian Affairs for consideration in the Senate.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Select Committee on Indian Affairs, by a poll of its members on April 28, 1982, recommends by a vote of 7 in favor and 0 opposed, that the Senate pass H.R. 5118, as amended.

COMMITTEE AMENDMENTS

The Committee recommends an amendment in the nature of a substitute.

SECTION-BY-SECTION ANALYSIS

Sec. 1 contains Congressional findings that:

The water rights claims of the Papago Tribe to waters of basin surrounding Tucson and Eastern Pima County are presently the subject of a lawsuit;

The pending and prospective suits may adversely affect the Indian and non-Indian economics in Southern Arizona;

Parties to the suits, plaintiffs and defendants have diligently attempted to resolve the water rights claims of the tribe by negotiation rather than by litigation;

It is in the best interests of the United States, the State of Arizona and its political subdivisions, and the Papago Tribe to resolve these claims by means of a legislative settlement;

The settlement contained in this Act will allow flexible management of water resources in southern Arizona and will encourage allocation of those resources to the highest and best uses and will enable the Papago Tribe to participiate in a basin-wide management plan for conservation and management of their water resources.

Sec. 2 contains definitions of terms used in the Act.

The Committee amendment to H.R. 5118 defines two additional terms in this Act in order to provide clarity on the measure of damages under Section 4(c) and 5(d) in the event the Secretary is unable to provide water to the Tribe as provided in this Act. The term "replacement costs" means the cost to acquire and deliver water from the alternative sources from which the Secretary may acquire water under Sections 4 and 5. The term "value" means the value attributed to the water based on the Tribe's anticipated or actual use of the water, including its fair market value.

Section 3 and 4 both relate to delivery of water from the CAP project pursuant to the December 12, 1980, agreement between the Papago Tribe and the Secretary of the Interior. These two sections should be read together.

Sec. 3. This section is broken into several important subsections.

Subsection 3(a) provides that as soon as possible, but not later than ten (10) years after enactment of this Act, the Secretary of the Interior shall deliver annually from the main project works of the Central Arizona Project 27,000 acre feet of water to the San Xavier Reservation and 10,800 acre feet of water to the Eastern Schuk Toak District of the Sells Papago Reservation. This water shall be of a quality suitable for agricultural use.

This subsection also provides that the Secretary, acting through the Bureau of Reclamation, shall improve and extend the existing irrigation system on the San Xavier Reservation, including deepening,

lining, replacement or relocation of existing wells, and shall design and construct such new or additional canals, laterals, farm ditches and irrigation works on the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation as are necessary for the efficient distribution for agricultural purposes of the quantities of water specified for the two acres in this subsection, without cost to the Tribe.

The Secretary's obligation to deliver the quantities of water specified in this subsection is contingent upon the Papago Tribe's agreement to the conditions set forth in Section 6 of this bill. Nothing in this section is meant to diminish or condition the obligation of the United States under the December 12, 1980 agreement between the United States and the Papago Tribe. The conditions under this section are meant to apply only to obligations outside the December 12, 1980 agreement that are imposed by this Act. The obligation commences as soon as the delivery system has been completed and it is possible to deliver water, but in no event later than ten (10) years after the enactment of this Act. Section 4(c) provides for payment of damages to the Papago Tribe in the event the Secretary is unable to acquire or deliver the water specified in this subsection.

Subsection 3(a)(3) provides that the Secretary of the Interior, acting through the Bureau of Reclamation, shall establish a water management plan for the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation which, except as necessary to be consistent with the provisions of this Act, will have the same effect as any management plan developed under this Arizona law.

It is not intended by this provision that the State of Arizona shall be vested with actual jurisdiction over water use within the reservation areas. It is the intent of this section that the plan developed by the Secretary shall be consistent with the State water plans.

Subsection 3(b)(1) provides that, if requested by the tribe, the Secretary shall conduct a study to determine the availability and suitability of water resources within the Sells Papago Reservation, but outside the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within the Sells Reservation.

Subsection 3(b)(2) provides that the Secretary, in cooperation with the Secretary of Energy or other appropriate agencies or officials, shall conduct a study to determine the availability of energy and the energy requirements resulting from enactment of this Act and the feasibility of constructing a solar power plant or other alternative energy producing facility to meet such requirements.

Subsection 3(c) provides that the Papago Tribe shall have the right to withdraw ground water from beneath the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation subject to the limitations of Section 6(a).

Subsection 3(d) provides that nothing in this Act shall diminish or abrogate the obligations of the Secretary to the Papago Tribe under the December 12, 1980, agreement. This agreement, entered into between the Tribe and Secretary Andrus, established the quantities of water to which the Papago Tribe would be entitled from the Central Arizona Project. The quantities specified in Section 3(a) are consistent with the December 12, 1980, agreement. In addition, the December 12, 1980, agreement provided for deliveries of water to the Chuichu

District not to exceed 8,000 acre feet of water during the life of the CAP project. With the exception of Section 11 extending the period of limitations for filing of claims, this Act does not apply to any rights or entitlements of the Chichu District under the agreement or otherwise.

Subsection 3(e) provides that nothing contained in section 3(c) or section 6(c) shall be construed to establish whether or not the Federal reserved rights doctrine applies or does not apply to groundwater. Section 3(c) provides for tribal withdrawal of groundwater subject to limitations prescribed in Section 6(a). Section 6(c) provides for uses including agricultural, municipal, industrial, commercial, mining, and recreational use, whether within or without the reservation areas.

Section 4 is broken into several subsections.

Subsection 4(a) provides that water shall be delivered from the main project works of CAP as provided in section 3(a) and the agreement of December 12, 1980, except as otherwise provided in this Section.

Subsection 4(b) provides that whenever the Secretary is unable, during any year, to deliver from the main CAP project the quantity and quality of water specified in Section 3(a), 4(a), and 4(b), he is obligated to acquire and deliver an equivalent quantity of water from alternative sources described in this subsection. These alternatives include unused water from the CAP project or other waters within the Tucson Active Management Area (TAMA) and that part of the Upper Santa Cruz Basin not within the TAMA in the State of Arizona.

Subsection 4(c) provides that when the Secretary is unable to acquire and deliver quantities of water as required under Section 3(a), then he shall pay damages to the tribe in the amount of value of such water. The term actual "replacement costs" means the cost to acquire and deliver water from the sources provided in subsections 4(a) or 4(b). Such costs would include costs of necessary construction amortized in accordance with standard Bureau of Reclamation procedures. The term "value" means the maximum benefit the Tribe could reasonably expect to derive from its use of water for any of the purposes described in Section 6(c) had the water been timely delivered. The Secretary's liability under Section 4(c) is thus the replacement costs of the undelivered water, or the maximum benefit the Tribe might reasonably have expected to derive from delivery.

Subsection 4(d) provides that the authority of the Secretary under subsection 4(b) to acquire privately owned land or water rights is limited to consensual transactions only. It also provides that no private lands shall be acquired for purposes of acquiring water unless the lands shall be acquired for purposes of acquiring water unless the lands have a recent history of receiving or being capable of receiving all of the water rights recognized by State law. A preference is established for acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition by the Secretary. The Secretary is prohibited from acquiring or disturbing water rights of any Indian tribe, band, group or community.

Subsection 4(e) is addressed to the obligation of the Secretary to construct works to deliver CAP water to the boundaries of the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation. Subsection 4(e) provides that the Secretary, acting through the Bureau of Reclamation, shall design and construct such works or facilities as may be necessary to deliver water from the CAP project to the distribution systems within the two reservations. The design and construction of this portion of the CAP delivery system is a part of the main project works of the CAP. The costs of such CAP design and construction which are attributable to delivery of water to reservation areas for use on Indian lands are allocable to the CAP project under P.L. 90–537. It is the intent of this subsection that only costs associated with construction of the main CAP project works, not on-reservation distribution systems, shall be charged to the lands irrigated as provided under P.L. 90–537. Collection of such costs shall be deferred and no assessments made unless the Indian title thereto shall have been extinguished as provided in the Leavitt Act of 1932 (25 U.S.C. 386a). Such deferral of construction charges shall not be applicable to any sale of water under the provisions of Section 6. Sale of water to non-Indian water users as provided in Section 6 shall be subject to recovery of appropriate construction costs and such recovered costs shall be repaid to the U.S. pursuant to P.L. 90–537.

The Gu-Vo District of the Papago Indian Reservation expressed opposition to this legislation on the ground that the Papago Tribe as a whole or all the lands of the Papago Tribe generally would be charged with these construction costs. The Gu-Vo and other districts within the Papago Indian Reservation are not recipients of water under the provisions of this Act. It is the intent of this section that costs of construction referred to in this section shall only be charged to and assessed upon lands actually irrigated with water provided from works constructed under this section.

Subsection 4(f) authorizes the Secretary to enter into contracts or agreements with the State of Arizona or any of its political subdivisions or with private entities for exchange of water or use of delivery facilities or to use facilities constructed with Federal funds.

Secton 5 establishes an obligation on the part of the United States to acquire and deliver quantities of reclaimed or treated water to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation. The water provided for under this section is in addition to the CAP or alternative waters provided for under Sections 3 and 4.

Section 5 is broken into numerous subsections as follows.

Subsection 5(a) provides that as soon as possible, but not later than ten (10) years from the date of enactment of this Act, the Secretary shall purchase reclaimed or treated water from the City of Tucson in accordance with the agreement described in section 7(a)(1) and shall deliver annually 23,000 acre-feet of water suitable for agricultural use to the San Xavier Reservation and 5,200 acre-feet of water suitable for agricultural use to the Schuk Toak District of the Sells Papago Reservation. The contract provided in section 7(a) requires the City of Tucson to make available to the Secretary at no

profit to the city such quantity of reclaimed water as is necessary to meet the Secretary's obligation under this section.

Subsection 5(b) provides optional means by which the Secretary may fulfill the obligation to deliver the quantity and quality of reclaimed water provided under subsection 5(a). This may include a filtration system or any other means which renders reclaimed water suitable for agricultural use, or a voluntary exchange of such reclaimed water for other water suitable for agricultural use.

With respect to the delivery mechanism, subsection 5(b) directs the Secretary to design, construct, operate, maintain, and replace such facilities as are appropriate, but specifically prohibits construction of a separate single purpose system to deliver reclaimed water to the two reservation areas. The provisions of subsection 5(a) and (b) may require some resizing in Phase B of the Tucson aqueduct. Unlike P.L. 90–537, this section does not provide for charges of construction costs against the Indian lands receiving the water. To the extent the requirements of Section 5 require any additional construction cost, it is the intent of this section that such costs will not be an additional charge against the affected Indian lands.

It should also be noted that the obligation for delivery of water under subsection 5(b) to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation may be fulfilled by recharging the subsurface water tables of the affected basins with quantities of water sufficient to enable the Papago Tribe to withdraw groundwater from these basins in the amounts provided in subsection 5(a) and still maintain a balance between the recharge and withdrawal. If such a delivery mechanism is employed, the costs of withdrawal of subsurface water by the Tribe shall be borne by the Secretary.

Subsection 5(c) provides that theSecretary, as an alternative to acquiring and delivering reclaimed water from the City of Tucson as required under subsection 5(a), may enter into agreements with other individuals or entities as authorized under Section 7(b). Sources from which this equivalent quantity of water may be acquired include unused water from the CAP project; water augmenting the supply of water through CAP, or privately owned water rights in surface or groundwater or reclaimed water within the Tucson Active Management Area (TAMA) and that part of the Upper Santa Cruz Basin not within the area. Transportation of water within the AMA shall be governed by State law.

Subsection 5(d) provides that when the Secretary is unable to acquire and deliver quantities of water as required under subsections 5(a), (b), or (c), he shall pay damages to the tribe in the amount of the actual replacement costs of such quantities as are not acquired and delivered, or the value of such water. This provision establishes liabilities on behalf of the United States for failure to deliver reclaimed water under Section 5(a) similar to the liabilities established under Section 4(c) for failure to deliver waters from the CAP project. The terms "replacement costs" and "value" as used in this subsection have the same meaning as those terms in Section 4(c).

Subsection 5(e) provides that the authority of the Secretary under subsection 5(c) to acquire privately owned land or water rights is limited to consensual transactions only. Preferences are established for acquisition of lands with a recent history of beneficial use of water

within the past 5 years, and the Secretary is prohibited from acquiring or disturbing water rights of any Indian tribe, band, group or community. This section is similar in all respects to the provisions of Section 4(d) relating to the Secretary's obligation to deliver CAP waters.

Section 6 provides that the Secretary shall be required to carry out his obligation under Section 4 (b), (c), and (e) and Section 5 only if the Papago Tribe agrees to limit pumping of groundwater under the San Xavier Reservation to not more than 10,000 acre feet and under the Schuk Toak District of the Sells Papago Reservation lying within the Tucson Active Management Area to those quantities being withdrawn on January 1, 1981, and also agrees to comply with the management plan established by the Secretary under Section 3(a)(3). The limitations imposed by this section do not apply to withdrawal from new or existing wells in either area which have a capacity of less than 35 gallons per minute and are used only for domestic and livestock purposes.

The conditional obligation of the Secretary under this subsection applies only to any new obligation imposed by this Act not otherwise assumed under the December 12, 1980 agreement to provide alternative water to the CAP allocation under Section 4(b), assume liability for failure to acquire and deliver water under Section 4(c), or design and construct works under the provisions of Section 4(e), or to acquire, deliver or assume liability for provision of reclaimed water under Section 5. If the Tribe fails to agree to the limitations set forth in this subsection, the provisions of Section 4 (b), (c), and (e) and Section 5 shall be without force or effect but the respective obligations of the parties under the December 12, 1980, agreement remain undiminished.

Subsection 6(b) provides that the obligations of the Secretary under the provisions of Section 3(a)(1)(B) and Section 3(a)(2)(B) to construct irrigation systems within the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation shall be conditioned on the Papago Tribe's agreement to assume the costs of subjugation of the land for which those distribution or irrigation systems are intended to benefit and also assume financial responsibility for the operation, maintenance, and replacement of such distribution or irrigation systems once the systems are completed and water delivered under the terms of this Act.

The responsibility of the Tribe for the operation, maintenance and replacement of the delivery systems shall be accomplished through the Tribe or its members or an entity designated by the Tribe, and shall be governed by the terms of Section 1 of the Act of August 1, 1914 (36 Stat. 270, 272; 25 U.S.C. 385). This Act provides that where Indians have adequate funds to repay the Government, maintenance charges shall be paid in accordance with regulations promulgated by the Secretary, and that where such charges are reimbursable out of tribal funds, such charges shall be apportioned in accordance with the benefits received by each individual Indian.

It is anticipated that the costs of land subjugation and operation and maintenance and replacement of the delivery system referred to in this section will be fully covered under the provisions of Section 9 of this Act establishing a trust fund of $15 million. In no event would

charges under this section be attributed to land in or funds of districts of the Papago Reservation not receiving benefits from the provisions of this Act.

Subsection 6(c) provides that the Tribe may devote water supplies under this Act to any use, including but not limited to agricultural, municipal, and industrial, commercial, mining, and recreational use, whether within or outside the reservation, so long as such use is within the Tucson Active Management Area and that part of the upper Santa Cruz Basin not within such area. The Tribe may sell, exchange, or temporarily dispose of water but it may not permanently alienate any water right established under this Act. Sale of water to non-Indians would be subject to recovery of construction charges as described in the analysis of Section 4(e).

Section 6(d) provides that nothing in subsection 6(c) shall be construed to establish whether or not reserved water may be put to use or sold for use off any reservation to which reserved water rights attach.

Section 7 is broken into several subsections.

Section 7(a)(1)(A) conditions the obligation of the Secretary to acquire and deliver CAP alternative water (or incur liabilty for failure to so deliver) under Section 4 (b), (c), and (e), and to acquire and deliver reclaimed water or its equivalent under Section 5, on the City of Tucson, the Papago Tribe and the Secretary reaching an agreement and entering into a contract within one year from the date of enactment of this Act for the acquisition by the Secretary of 28,200 acre feet of reclaimed water from the City of Tucson, as is contemplated by Section 5(a). The City is to make such quantities of water available without profit to the City. The City is already required by law to provide secondary treatment to its municipal water before release or discharge. Such water is fit for most, but not all, agricultural purposes and is a readily saleable commodity. In entering this agreement the City thus gives up its right to obtain a profit from the sale of this quantity of reclaimed water. By the same token, to the extent any treatment beyond that presently required by law is required in order for the Secretary to meet the water quality standards of "suitable for agricultural purposes" as provided in Section 5, the Secretary will be responsible for such further treatment. The Secretary will be obligated to provide compensation to the City of Tucson in order to avoid a loss to the City if he elects to contract with the City for such further treatment.

Section 7(a)(1)(B) conditions the obligations of the Secretary under Section 4(a), (b) and (e) and Section 5 on the agreement of the Papago Tribe to file a stipulation for a voluntary dismissal with prejudice of the water suit filed by the United States on its behalf against the City of Tucson and other water users in the United States and the Papago Indian Tribe v. City of Tucson, consolidated cases, CIV 75–39 TUC(JAW) D. Ariz. In addition, Section 7(a)(1)(C) requires that the Papago Tribe execute a waiver and release of any and all claims of water rights or injuries to water rights within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area; and that it execute a waiver and release of any and all future claims of water rights within these two areas.

This section assumes that any agreement of the Papago Tribe to file a voluntary dismissal of its pending law suit or to execute the aforesaid waivers and releases will be an integral part of the contract with the City of Tucson. The waiver and release by the Tribe of future claims to water rights shall not affect claims arising under or protected by this Act.

Section 7(b) provides that after the conditions provided in Section 7(a) have been met, the Secretary is then authorized to enter into agreements with private individuals or other entities to acquire and deliver water under Section 5(c) providing for alternative sources to reclaimed water acquired from the City of Tucson, if through such contracts it is possible to deliver the quantities of water required in Section 5(a). The intent of this section is to condition the authority of the Secretary to enter into such contracts upon the prior agreement and compliance of the City of Tucson and the Papago Tribe with the provisions of Section 7(a). Assuming these conditions have been met, it is not the intention of this section to preclude the Secretary from entering into such agreements even though the full amount of water provided under Section 5 cannot be met. The obligation of the Secretary is to provide to the extent possible all of the water required under Section 5 and to pay damages to extent of any short fall.

Section 7(c) provides that nothing in Section 7 shall be construed as a waiver or release by the Papago Tribe of any claim where such claim arises under this Act.

Section 7(d) provides that the waiver and release referred in Section 7(a) shall be of no force or effect until such time as the trust fund provide for in Section 9 has been funded through appropriations by Congress. This is an important proviso. Section 7(a) requires that the Secretary, the City of Tucson and the Papago Tribe consumate an agreement with regard to acquisition of reclaimed water, dismissal of the pending law suits and waiver of future claims, within the Tucson Active Management Area and their part of the Upper Santa Cruz Basin not within said area, within one year from the date of enactment of this Act. Section 7(d) provides that any waiver or release referred to in Section 7(a) shall be of no force or effect until the trust fund is established. It is thus of paramount importance that the trust provided for in Section 9 be promptly funded by the Congress, in order that the agreements of the Secretary, the City of Tucson and the Papago Tribe not be nullity.

Section 7(e) provides that the settlement with the Papago Tribe provided under this Act shall be deemed to satisfy any and all claims of water rights or injuries to water rights of all individual members of the Papago Tribe that have interests in the San Xavier Reservation of the Schuk Toak District of the Sells Papago Reservation located with the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within the said area. Individual entitlement to water shall be satisfied out of the water resources provided to the Tribe under this Act. This "resolution" applies to water rights of individuals with respect to lands within the two reservation areas and not to any rights such individuals might have in lands situated outside the two designated reservation areas.

Section 8 is directed toward a reservation District of the Papago Tribe not hitherto affected by this Act. Section 8 directs the Secretary

to carry out within one year from the date of enactment of this Act a study to determine which lands, if any, within the Gila Bend Reservation have been rendered unsuitable for agriculture by reason of the operation of the Painted Rock Dam. If on the basis of this study it is determined that lands have been rendered unsuitable for agriculture, then the Secretary is authorized to exchange such lands for an equivalent acreage of land within the public domain of a quality equal to those diminished by the operation of the Painted Rock Dam. Such exchanged lands shall be held in trust for the Papago Tribe and shall be a part of the Gila Bend Reservation.

Section 8(e) provides that the Secretary may require the Papago Tribe to reimburse the United States for monies paid, if any, for flood easements on lands which the Secretary replaces by exchange under subsection 8(b). The Committee does not intend that cost of relocation shall be considered but only payments made by the Government for acquisition of flood easements of land. In the event any such payments were in fact made, it is the intent of this section that the Secretary shall have full latitude to establish reasonable terms for the repayment of such monies.

Section 9 provides for the establishment of a trust fund in the amount of $15 million for the benefit of the Papago Tribe. This sum is to be invested by the Secretary in interest bearing accounts. The corpus of this trust account is to be held intact and the income accruing on the account may only be used for subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the Papago Reservation which are not the obligation of the United States under this or any other Act of Congress.

The income of this trust fund will enable the Tribe to subjugate lands for agricultural purposes anywhere within any district of the Papago Reservation, and expend monies for construction, etc., of facilities related to on-reservation distribution systems anywhere within the Papago Reservation. This use of trust income is not restricted to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation or to development of water for agricultural purposes.

Under other provisions of this Act the Secretary is obligated under Section 3 to construct or upgrade distribution systems within the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation. It is the intent of this section that upon fulfillment of this initial obligation, the income from this trust fund will be available to the Tribe to provide necessary upkeep of the established systems.

Section 10 provides that the function of the Bureau of Reclamation provided for under this Act shall be subject to the provisions of P.L. 93–638, the Indian Self-Determination and Education Assistance Act. It is the intent of this section that the provisions of P.L. 93–638 apply to any and all projects of the Bureau of Reclamation under this Act which are not a part of the main project works of Phase II of the Tucson aqueduct but involve improvement of existing systems or design and construction of distribution systems within the two reservation areas.

Section 11 extends the period under the Federal statute of limitations (28 U.S.C. 2415) in which the United States on behalf of the Papago Tribe or the Tribe itself may bring a claim for damages to December 31, 1984. The one year time period for consumation of a contract with the City of Tucson and for execution of waivers by the tribe extends beyond the present period of limitations provided in 28 U.S.C. 2415. In addition, the Papago Tribe is currently negotiating further settlement of water rights in water districts outside the area effected by this Act. This extension will provide sufficient time to complete these negotiations or bring an appropriate suit.

Section 12 provides that if a Federal entity is established to provide financial assistance to undertake arid land renewable resources projects, the Papago Tribe should be given a priority in assistance for a portion of land adequate to contribute significantly to the Papago economy.

Section 13 provides that effective October 1, 1982, there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act. The Committee notes that important provisions of this Act are conditioned upon appropriation of the funds necessary to establish the trust fund provided in Section 9. Anticipated costs are discussed extensively in the main body of this report.

Section 14 provides that no authority in this Act to enter into contracts or make payments shall be effective except as provided in advance in Appropriation Acts, and new budget authority shall be effective only for fiscal years beginning after September 30, 1982.

Section 15 provides that this Act may be cited as the "Southern Arizona Water Rights Settlement Act of 1982."

COST AND BUDGETARY CONSIDERATIONS

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 28, 1982.

Hon. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 5118, the Southern Arizona Water Rights Settlement Act of 1982.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

APRIL 28, 1982.

1. Bill number: H.R. 5118.

2. Bill title: Southern Arizona Water Rights Settlement Act of 1982.

3. Bill status: As ordered by the Senate Select Committee on Indian Affairs, April 28, 1981.

4. Bill purpose: The bill provides the Secretary of the Interior with the authority to acquire and provide for the delivery of specific amounts of water to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation of the Papago Tribe of Arizona. The bill is expected to make possible the execution and implementation of a permanent settlement agreement between the Papago Tribe of Arizona and numerous parties in Arizona, including major mining companies, agricultural interests, and the City of Tucson.

5. Cost estimate:

	Millions
Estimated authorization level:	
Fiscal year:	
1983	$16
1984	-----
1985	-----
1986	-----
1987	1
Estimated outlays:	
Fiscal year:	
1983	-----
1984	1
1985	-----
1986	-----
1987	1

This estimate does not include any cost to meet the requirement that the Secretary of the Interior acquire and deliver an additional 28,200 acre feet of agricultural water to the reservations. Since there are a variety of options available to the Secretary the likely costs are very uncertain, although they are not expected to exceed $50 million. If funding is required, it is expected that it would be combined with 1985 funding for Phase B of the aqueduct. This bill assumes that the cost of constructing that portion of the aqueduct allocable to delivering the Papago's CAP allocation is authorized by P.L. 90–537, the underlying CAP authorization. CBO has estimated that cost to be $65 million.

The costs of operating, maintaining, and replacing the facilities required for any additional capacity, expected to occur in fiscal years 1988 and beyond, are also authorized by this bill. The bill also makes the Secretary of the Interior liable for the annual delivery of 66,000 acre feet of water to the reservations in question regardless of natural events. This annual contingent liability of the government in perpetuity could cost up to $3.3 million in 1982 dollars for any year when water could not be delivered.

The costs of this bill fall within budget function 450.

6. Basis of estimate: For the purpose of this estimate, it is assumed that the bill will be enacted before October 1, 1982, and that the amounts authorized will be appropriated. The bill authorizes the appropriation of $15 million to establish a trust fund for the benefit of the Papago Tribe. For the purposes of this estimate, it was assumed that the full amount would be appropriated in fiscal year 1983 and deposited into the appropriate trust account by the Secretary of the Interior. The income from this trust fund is assumed to be disbursed to the tribe as it is earned for the purpose specified.

The bill also directs the Secretary to:

carry out a study to determine the availability of energy and the energy requirements that would result from the enactment of the bill,

study the feasibility of constructing a solar power plant or other alternative energy producing facility to meet those requirements,

establish a water management plan for the two reservations covered by the bill,

carry out a study to determine the availability and suitability of water resources within the Sells Papago Reservation but outside the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area, subject to a request by the Tribe, and

carry out a study to determine which lands, if any, within the Gila Bend Reservation have been rendered unsuitable for agriculture.

The costs of such studies depend on the unique demands of each report, but in total CBO estimates that approximately $1 million would be sufficient to develop the studies specified in the bill. It is assumed that $1 million would be appropriated in fiscal year 1983 to carry out these studies, and that those funds will be spent at rates typical for similar studies performed by the Department of the Interior.

In addition to these activities, the bill specifies the obligations of the Secretary of the Interior regarding the design, construction, operation, maintenance, and replacement of water delivery systems to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation, the costs of which are presumed by the Committee to be entirely allocable to Phase B construction costs of the Tucson Aqueduct, previously by P.L. 90–537. The Committee has assumed that all costs associated with delivering 37.8 million acre feet of Central Arizona Project (CAP) water are directly allocable to the CAP authorizing legislation except for the costs of providing water to specific sites on the reservation. This bill does, however, authorize funds to cover the cost, if required, to increasing the capacity of the Tucson aqueduct to accommodate 28.2 acre feet of water suitable for agricultural use to the reservations to be obtained from the City of Tucson.

The bill also authorizes the Secretary to update existing, on-reservation irrigation systems as well as to design and construct systems where necessary for the efficient distribution of water delivered to the reservation boundary. This bill assumes that all costs associated with fulfilling this requirement are allocable to general CAP authorizations except for the costs of constructing farm ditches to specific reservation sites. Based on this assumption, only $1 million of the $20 million estimated to be needed in fiscal year 1987 is directly attributable to this bill; the remaining $19 million is assumed to be authorized by existing legislation. Funding in fiscal year 1987 would assure completion of these facilities at approximately the time Phase B of the aqueduct is expected to be completed, in fiscal year 1989.

In addition to the CAP water allocation, the bill also requires the Secretary to acquire and deliver 28,200 acre feet of water suitable for agricultural use to the reservations. The bill requires the City of Tucson to make available at no profit to itself a volume of water

to the Secretary sufficient to assure the delivery of 28,200 acre feet of agricultural water to the reservations. The Secretary is given maximum discretion to exchange or otherwise acquire agricultural water for the Papago Tribe using reclaimed water provided by the City of Tucson. Since the Secretary has several options for fulfilling this commitment with considerable cost differences, it is not possible to estimate with confidence the cost of this provision; however, there are a number of possible arrangements whereby the costs could be negligible.

If the Secretary acquires suitable water via exchange or other treatment options, he is still required to provide for delivery of that water to the reservation. Assuming the acquired water is of sufficient quality to be delivered via the CAP aqueduct, it would be necessary to build sufficient carrying capacity into the reservation connections to assure annual delivery of the total 66,000 acre feet of water. This bill authorizes appropriations to cover any additional cost incurred to bring the CAP aqueduct capacity up to 66,000 acre feet level, but requires that any such system cannot be separate from the main CAP aqueduct system.

Since specific plans for Phase B alignment and capacity are not finalized and the options available to the Secretary concerning the requirement to provide agricultural water are uncertain, it is not possible to estimate with confidence the costs associated with delivering the agricultural water to the reservations. However, based on estimated costs associated with the primary CAP allocation, costs for the added capacity, if that option is selected, should be less than $50 million and would be in addition to the CAP funding estimate of $65 million in fiscal year 1985 for the Papago share of the construction costs of the Tucson Aqueduct.

7. Estimate comparison: None.

8. Previous CBO estimate: On March 2, 1982, CBO prepared a cost estimate for H.R. 5118, as ordered reported by the House Committee on Interior and Insular Affairs. That bill specifically authorized funds equal to the Papago's allocable share of Phase B construction of the Tucson Aqueduct (estimated to be $65 million in fiscal year 1985) and funds for on-reservation distribution facilities (estimated to be $20 million in fiscal year 1987.) This bill assumes that those activities are authorized by existing legislation.

9. Estimate prepared by: Linwood Lloyd.

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill.

The Committee believes that H.R. 5118, as amended, will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The only Executive communication received by the Committee was in the form of testimony offered at the March 31, 1982, hearing by

Garrey E. Carruthers, Assistant Secretary of the Interior-Land and Water Resources. The statement follows:

> Statement of Garrey E. Carruthers, Assistant Secretary of the Interior-Land and Water Resources, representing the Department of the Interior before the Senate Select Committee on Indian Affairs on S. 2114, a bill "To provide water to the Papago Tribe of Arizona, to settle Papago Indian water right claims in portions of the Papago reservations, and for other purposes" and H.R. 5118, a bill "to provide water to the Papago Tribe of Arizona and its members, to settle Papago Indian water rights claims in portions of the Papago reservations, and for other purposes"—March 31, 1982.

Mr. Chairman and members of the subcommittee. I am appearing today to present the views of the Department of the Interior on S. 2114 and H.R. 5118. These two measures provide water for the Papago Tribe, settlement of Tribal water rights claims in portions of the Tribal reservations, and contain other related provisions.

We oppose enactment of these bills. While they settle the liabilities of all the non-Federal parties responsible for the water problem, they do so at Federal expense.

The Department of the Interior, in 1975 as trustee, filed suit on behalf of the Papago Indians to settle this problem in the courts. The defendants in that suit are: the City of Tucson, the State of Arizona; six mining companies, a farming enterprise; and 1,600 other private water users in the basin. We feel the settlement act should include the defendants in the suit and that they should share in the costs to provide the Papago Indians with water rather than the general taxpayer. As a solution to the problem of competing water rights, a requirement that the Federal Government shoulder the burden of the settlement by supplying additional water supplies is clearly the most expensive Federal alternative.

The people who are responsible for the existing water supply situation not only are not required to contribute to the settlement but would be permitted to continue their full use of surface and ground water in an area where both are already oversubscribed. The exception is that the City of Tucson could sell 28,200 acre-feet per year of reclaimed effluent water to the United States at cost but without profit. However, if the City agrees to contribute and fails to supply the water, the Federal Government would be required to supply replacement water at Federal cost or to pay damages to the tribes for any water not delivered by the City. The Secretary also may be required to provide additional facilities to insure that the reclaimed water is suitable for agricultural use. The Federal Government, rather than the principal existing users, would be responsible for delivering the effluent provided by the City of Tucson to the reservation. These costs could be substantial, depending on the means used to move the water to the tribe.

In these bills, the Federal Government also would be responsible for delivery of Central Arizona Project water, and in the event water is not delivered to the tribe, the Federal Government would be required to pay damages to the tribe, even though other tribes in the service area would be required to take shortages.

We feel that these bills set new precedents and impose new liabilities on the Federal Government. We are presently involved in 56 water adjudication actions in approximately a dozen different river basins. For the Federal Government to pay costs similar to those in this bill without participation by the responsible non-Federal parties, would be costly and inequitable.

These bills could establish highly undesirable and costly precedents for settling those actions. As for the non-Indian interests against whom claims are currently being litigated, these parties would be free from liability even though they would not contribute to the costs of the settlement.

These bills guarantee, in law, the delivery of 37,800 acre-feet per year of Central Arizona Project water, for which the tribe now has a contract. No other Arizona tribe has such an ironclad guarantee. In fact, our contracts with the other Arizona tribes require a reduction in water delivered when dry periods occur as is required from other project users. In addition to the CAP allotment, the tribe is also guaranteed the additional 28,200 acre-feet of reclaimed water.

We estimate that the cost of these bills to the Federal Government could be $100 to $200 million dollars not including liabilities or costs to deliver Central Arizona Project water.

Our main concern is that the Federal Government and the general taxpayer are underwriting most of the cost of this proposal.

Mr. Chairman, this completes my statement. I would be pleased to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by H.R. 5118, as amended.

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